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12 EMILY JUMP, on behalf of themselves and all
13 others similarly situated

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 AURORA BAILEY, and EMILY INA JUMP,
17 on behalf of themselves and all others similarly
18 situated,

19 Plaintiffs,

20 v.

21 ANTHEM BLUE CROSS LIFE AND
22 HEALTH INS. CO. dba ANTHEM BLUE
23 CROSS; BLUE CROSS OF CALIFORNIA dba
24 ANTHEM BLUE CROSS,

25 Defendant.

Case No. 4:16-cv-04439-JSW

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
PAYMENT TO CLASS
REPRESENTATIVES**

DATE: August 27, 2021

TIME: 9:00 a.m.

JUDGE: Hon. Jeffrey S. White

CTRM: Courtroom 5, 2nd Floor

Complaint filed: August 5, 2016

1st Am. Complaint Filed: June 19, 2017

2nd Am. Complaint Filed: January 25, 2018

3rd Am. Complaint Filed: May 23, 2018

1 Plaintiffs Aurora Bailey and Emily Ina Jump, individuals, and on behalf of all other
2 similarly situated California residents (“Plaintiffs” or “Class Representatives”), through their
3 respective attorneys, seek, pursuant to Federal Rule of Civil Procedure 23(e), an Order granting
4 preliminary approval of a class action settlement and directing the dissemination of the class
5 notice (the “Motion”). The Court, having reviewed the submissions of the Parties, having held a
6 hearing on August 27, 2021 and having found that the Parties are entitled to the relief they seek;
7 and for good cause shown, hereby orders as follows:

8 The Motion is GRANTED, and it is further ORDERED as follows:

9 1. The proposed Class Settlement Agreement and General Release, dated May 27,
10 2021 (the “Settlement Agreement”), submitted with the Motion and filed with the Court, is
11 preliminarily approved as being within the range of potential final approval.¹

12 2. Based upon the submissions of the Parties and the evidence submitted therein, the
13 Court conditionally makes the following findings for settlement purposes only, subject to final
14 affirmation at the Fairness Hearing: (a) the members of the Settlement Class (“Settlement Class
15 Members”) are so numerous as to make joinder impracticable; (b) there are questions of law and
16 fact common to the Settlement Class, and such questions predominate over any questions
17 affecting only individual Settlement Class Members; (c) the Class Representatives’ claims and
18 the defenses asserted thereto are typical of the claims of Settlement Class Members and the
19 defenses asserted thereto; (d) Class Representatives and Settlement Class Counsel can and have
20 fairly and adequately protected the interests of the Settlement Class Members in this action; and
21 (e) a class action is superior to all other available methods for fairly and efficiently resolving this
22 action and provides substantial benefits to the Parties, the Settlement Class Members and the
23 Court.

24 3. Accordingly, for purposes of this settlement only, the Court preliminarily approves
25 that Plaintiffs may serve as representatives of the Settlement Class, represented by the Settlement

26 ¹ Unless otherwise specified, all defined terms in this Order have the same meaning as the
27 meaning described in the Settlement Agreement, and those terms are incorporated here by this
28 reference. To the extent there is any conflict between the definitions of those terms, the
definitions in the Settlement Agreement will control.

1 Class Counsel set forth below, and conditionally certifies a Settlement Class defined as follows:

2 All California residents who, between August 5, 2012 and 30 days
3 prior to the entry of this Preliminary Approval Order,² (1) were
4 enrolled in an ERISA plan underwritten or administered by
Anthem; (2) had any of the following diagnoses:
(i) Anorexia nervosa;
(ii) Bulimia nervosa;
(iii) Eating disorder not otherwise specified; or
(iv) Binge eating disorder;
5 and (3) had a request for authorization of eating disorder
6 treatment/services processed through the Utilization Program as
7 described in the Third Amended Complaint.
8

9 4. This matter is conditionally certified as a class action for settlement purposes only,
10 under Federal Rule of Civil Procedure 23(e) as applicable. If the settlement does not receive final
11 approval, Anthem retains the right to assert that this action may not be certified as a class action
12 for liability purposes.

13 5. Law Offices of Kathryn Trepinski and Kantor & Kantor LLP are appointed as
14 Settlement Class Counsel.

15 6. The Court finds that the Settlement Agreement falls within the range of possible
16 approval such that it warrants notice thereof to be disseminated to the Settlement Class Members
17 in the manner set forth herein. Accordingly, the terms of the Settlement Agreement are
18 preliminarily approved, subject to a further final determination to be made after a Fairness
19 Hearing, as defined below.

20 7. A final hearing (the “Fairness Hearing”) shall be held before this Court on **May 6,**
21 **2022 at 9:00 a.m.,** to determine whether: (a) for final affirmation, this action meets each of the
22 prerequisites for class certification and may properly be maintained as a class action on behalf of
23 the Settlement Class for settlement purposes; (b) the Court should finally approve the Settlement
24 Agreement and all terms contained therein as fair, reasonable, adequate, and in the best interests
25 of the Settlement Class, by entering an Order substantially in the form of Exhibit 4 to the
26 Settlement Agreement (“Final Approval Order”); (c) the Court should enter final judgment in

27 _____
28 ² Based on a preliminary approval date of August 27, 2021, this period is August 5, 2012 through
July 28, 2021.

1 accordance and consistent with the terms of the Settlement Agreement, by entering a Judgment
2 substantially in the form of Exhibit 6 to the Settlement Agreement (“Final Judgment”); and (d) to
3 approve the payment to the Class Representatives, as set forth in the Settlement Agreement. The
4 Fairness Hearing may be postponed, adjourned or continued by further order of this Court,
5 without further notice to the Settlement Class. Any Class Member may attend the Fairness
6 Hearing and be heard by the Court.

7 8. At the Fairness Hearing, the Court will consider and determine whether the
8 Settlement Agreement should be finally approved as fair, adequate and reasonable in light of any
9 timely and valid objections presented by Settlement Class Members and the Parties’ responses to
10 any such objections that have been submitted to the Court in accordance with the provisions set
11 forth below.

12 9. Any Settlement Class Member may object to the fairness, reasonableness or
13 adequacy of the proposed settlement. Each Settlement Class Member who wishes to submit a
14 written objection to any term of this settlement must do one of the following: (1) deliver by hand
15 or send, by first class mail or overnight delivery, a notice of objection to either (a) the Settlement
16 Administrator; or (b) the Court, at Class Action Clerk, United States District Court for the
17 Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, California
18 94612; or (2) file the written objection in person at any location of the United States District
19 Court for the Northern District of California. Any such objection must be postmarked no later
20 than 45 days after class notice is mailed. The request must (i) identify the case name and number
21 (*Bailey v. Anthem Blue Cross Life & Health Insurance Co.*, Case No. 4:16-cv-04439-JSW (N.D.
22 Cal.)); (ii) identify the individual objecting as a Settlement Class Member; (iii) attach copies of
23 materials the Settlement Class Member will submit to the Court or present at the Fairness Hearing
24 (if any); (iv) be signed by the Settlement Class Member; and (v) clearly state in detail: (1) the
25 legal and factual ground(s) for the objection; (2) the Settlement Class Member’s name, address
26 and, if available, telephone number and e mail address; and (3) if represented by counsel, such
27 counsel’s name, address and telephone number, so that they may be contacted by counsel for the
28 Parties, the Court, or the Settlement Administrator, if necessary. Any objection that fails to

1 substantially satisfy the above requirements, or that is not properly and timely submitted, shall be
2 deemed ineffective, will be disregarded by the Court (absent further order), and deemed to have
3 been waived, and the Settlement Class Member asserting such objection shall be bound by the
4 final determination of the Court.

5 10. Any person included within the Settlement Class who wishes to be excluded from
6 the Settlement Class must do so in writing by mailing a written request for exclusion from the
7 Settlement to Rust Consulting, Inc., at the address(es) set forth in the settlement notices. Such
8 requests must be postmarked no later than 45 days after class notice is mailed. The request must
9 (1) identify the case name and number (*Bailey v. Anthem Blue Cross Life & Health Insurance*
10 *Co.*, Case No. 4:16-cv-04439-JSW (N.D. Cal.)); (2) be signed by the person seeking to be
11 excluded from the Class; (3) clearly express the person's desire to be excluded from the Class;
12 and (4) include the person's name, address and, if available, telephone number and e mail address
13 and, if represented by counsel, counsel's name, address and telephone number, so that they may
14 be contacted by counsel for the Parties, the Court, or the Settlement Administrator, if necessary.
15 Any Class Member who wishes to be excluded from the Class can only opt out for himself or
16 herself and cannot opt out for any other person or any group of persons (with the exception of a
17 Class Member acting on behalf of minor children), nor can any person within the Class authorize
18 any other person to opt out on his or her behalf (with the exception of a caregiver or Conservator
19 acting on behalf of a Class Member who requires such assistance). Any request for exclusion that
20 fails to satisfy the above requirements, or that has not been timely postmarked by the deadline set
21 forth in this Preliminary Approval Order, will be deemed ineffective, and any person included
22 within the Settlement Class who does not properly and timely submit a request for exclusion shall
23 be deemed to have waived all rights to opt out and shall be deemed a Settlement Class Member
24 for all purposes.

25 11. The Court finds that the manner of dissemination and content of the settlement
26 notices as specified in detail in the Settlement Agreement will provide the best notice practicable
27 to the Settlement Class under the circumstances. Anthem will pay all costs incurred in connection
28 with the preparation and dissemination of any settlement notices to the Settlement Class. The

1 Court hereby also approves the appointment of Rust Consulting, Inc., as the Settlement
2 Administrator for the purpose of disseminating the Class Notices (Exhibits 8 and 5 of the
3 Settlement Agreement), the forms of which are hereby approved.

4 12. If the Settlement Agreement is finally approved, the Court shall enter a Final
5 Approval Order and Final Judgment, substantially in the form of Exhibits 4 and 6, respectively, to
6 the Settlement Agreement, that will be consistent and in accordance with the terms of the
7 Settlement Agreement and will: (1) finally approve the terms of the Settlement Agreement,
8 including the provision for the incentive payment to the Plaintiffs, as fair, reasonable and
9 adequate; (2) do so without costs except as provided for under the terms of the Settlement
10 Agreement; (3) release the Released Parties of and from all further liability to the Plaintiffs and
11 Settlement Class Members with respect to the Released Claims as set forth in the Settlement
12 Agreement; and (4) permanently bar and enjoin Plaintiffs and the Settlement Class Members from
13 bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in,
14 participating in, assisting in any way, formally or informally, except as required by law, or
15 receiving any benefits from, any other lawsuit, arbitration, or administrative, regulatory or other
16 proceeding or cause of action in law or equity that asserts the Released Claims, all consistent and
17 in accordance with the terms of the Settlement Agreement. Such Final Approval Order and Final
18 Judgment shall be fully binding with respect to all members of the Settlement Class who have not
19 timely and validly requested exclusion and the Released Parties.

20 13. In the event that the proposed settlement provided for in the Settlement Agreement
21 is not approved by this Court, or entry of the Final Approval Order and Final Judgment does not
22 occur for any reason, or any approval is successfully appealed, then the Settlement Agreement, all
23 drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by this
24 Court in connection therewith shall become null and void. In such event, the Settlement
25 Agreement and all negotiations and proceedings relating thereto shall be withdrawn and of no
26 further force and effect without prejudice to the rights of the Parties, who shall be restored to their
27 respective positions as of the date of the execution of the Settlement Agreement, including,
28 without limitation, Anthem's right to challenge class certification on any and all grounds.

- 1 14. The dates of performance are as follows:
- 2 a. Within 30 days after entry of this Order, the Summary Settlement Notice
- 3 substantially in the form of Exhibit 8 attached to the Settlement Agreement shall be mailed
- 4 directly to each Settlement Class Member, and shall refer Settlement Class Members to the
- 5 settlement website for purposes of obtaining detailed information or answers to questions relating
- 6 to the terms of the settlement, and including any relevant deadlines for the Fairness Hearing.
- 7 b. The Full Settlement Notice substantially in the form attached to the
- 8 Settlement Agreement as Exhibit 5 shall be posted on a settlement website no later than
- 9 **September 27, 2021**, the date that the Summary Settlement Notice (Exhibit 8 to the Settlement
- 10 Agreement) is mailed to the Settlement Class. A copy of the Settlement Agreement shall be made
- 11 available to the public (a) through the settlement website, (b) by calling a toll-free number to be
- 12 established by Anthem or the Settlement Administrator, (c) by accessing the Court docket in this
- 13 case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system
- 14 at <https://ecf.cand.uscourts.gov>, or (d) by visiting the office of the Clerk of the Court for the
- 15 United States District Court for the Northern District of California, Oakland Courthouse, 1301
- 16 Clay Street, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through
- 17 Friday, excluding Court holidays. In addition, Anthem or the Settlement Administrator will
- 18 promptly establish and staff a dedicated, toll-free automated telephone number that Settlement
- 19 Class Members can call to hear information in English and Spanish regarding the settlement. This
- 20 toll-free number will be operational no later than the date that the Summary Settlement Notice
- 21 (Exhibit 8 to the Settlement Agreement) is mailed to the Settlement Class and shall be operational
- 22 until the claims review process described in the Settlement Agreement is completed.
- 23 c. The deadlines for filing or submitting objections and requests for exclusion
- 24 by Settlement Class Members shall be **November 11, 2021**.
- 25 d. Plaintiffs or the Parties shall file and serve papers in support of final
- 26 approval of the settlement, and Plaintiffs shall file their motion for payment of attorneys' fees and
- 27 reimbursement of litigation expenses to Settlement Class Counsel and payment to the Class
- 28 Representative, by **April 1, 2022**.

1 e. The Parties may file responses to any timely and valid objections by **April**
2 **1, 2022.**

3 g. The Fairness Hearing shall be held before this Court on **May 6, 2022** at
4 **9:00 a.m.**

5 15. This Court hereby enters a preliminary injunction barring and enjoining the Class
6 Representative and all Settlement Class Members or the Released Parties from bringing, filing,
7 commencing, prosecuting, continuing to prosecute, maintaining, intervening in, participating in,
8 assisting in any way, formally or informally, except as required by law, or receiving any benefits
9 from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding in law or
10 equity that asserts, arises from, concerns, or is in any way related to the Released Claims or the
11 claims set forth in the Settlement Agreement, as applicable to each, until such time as this Court
12 has ruled on the fairness of the settlement terms following the Fairness Hearing. This injunction
13 shall be deemed automatically vacated if the settlement is not finally approved or is reversed on
14 appeal.

15 DATED: August 27, 2021

16 
17 Hon. Jeffrey S. White
18 United States District Judge
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